

**MINUTES OF  
FAUQUIER COUNTY BOARD OF ZONING APPEALS**

October 4, 2001

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, October 4, 2001, at 2:00 P.M. in the Meeting Room of the Warren Green Building, 10 Hotel Street, Warrenton, Virginia. Members present were Mr. William Barr, Vice Chairman, Mr. John Meadows, Mr. Eugene Lofdahl, Mr. James Van Luven and Mr. Maximilian A. Tufts, Jr. Mr. William Rider, Chairman, and Mrs. Peg Mailler were absent. Also present were Mrs. Tracy Gallehr, Assistant County Attorney; Mrs. Carolyn Bowen, Zoning Administrator; Mr. Fred Hodge, Assistant Zoning Administrator; and Ms. Holly Meade, Planner.

**MINUTES**

The minutes of the September 6, 2001 meeting were approved as submitted.

**LETTERS OF NOTIFICATIONS**

**PUBLIC NOTICE** Mrs. Bowen stated that to the best of her knowledge, the cases before the Board of Zoning Appeals for a public hearing have been properly advertised, posted, and letters of notification sent to adjoining property owners.

**ELECTION OF SECRETARY**

Mr. Van Luven nominated Mrs. Mailler as Secretary. There were no other nominations on the floor. On the motion made by Mr. Lofdahl and seconded by Mr. Tufts, Mrs. Mailler was nominated by acclamation. Her term will expire December 31, 2001.

**APPEAL #47997 JOHN W. AND JANETE CASSELL (OWNERS) / JEFFREY B. RICE (REPRESENTATIVE)**

Applicants are appealing a decision of the Zoning Administrator that they are operating a sanitary landfill in violation of the Zoning Ordinance. The subject properties are identified as PIN #7911-80-8219-000 and PIN #7911-81-0567-000, containing 35.00 acres and 72.00 acres respectively, located on Old Calverton Road (Route 642) and Boteler Road (Route 790), and is zoned Rural Agricultural, Cedar Run District.

On the motion made by Mr. Meadows and seconded by Mr. Lofdahl, it was moved to postpone the meeting until November 1, 2001 due to the absence of two Board members. Mr. Jeffrey Rice, counsel for the Cassell's, had no objection. Mrs. Bowen clarified that it would be a closed meeting.

**VARIANCE #48032 SUSAN A. HUBERTH**

Applicant is requesting a variance for a proposed addition to the existing dwelling. The addition would be located 53.4 feet from the centerline of Scuffleburg Road, wherein the Zoning

Ordinance requires 75 feet from the centerline. The subject property is identified as PIN #6032-83-1001-000, containing 13.48 acres, located at 10608 Pleasant Vale Road (Route 724), and is zoned Rural Agricultural, Marshall District.

Mr. Hodge reviewed the staff report and stated that the applicants are requesting a variance to the front setback requirement. The dwelling was constructed in the 1920's, before the implementation of zoning regulations. A site visit was made this morning.

Ms. Susan Huberth was present in support of her request. She asked the Board to favorably consider her request for expansion of her existing kitchen. Ms. Huberth expressed concern that her and her husband were reaching an age where they had to think about their future. It is her desire to make the house handicapped accessible for possible future needs.

Mr. Barr asked the applicant to explain why this request was a hardship rather than a matter of convenience. Ms. Huberth explained that currently, she is not facing a hardship; however, if the property was ever sold or if her or her 80 year old husband incurred future health issues, they would be facing a hardship.

Mr. Meadows stated that actually viewing this property allowed him to see that the proposed addition has zero effect on anyone surrounding the property.

On the motion made by Mr. Tufts and seconded by Mr. Meadows, it was moved to grant variance #48032, after due notice and hearing, as required by Code of Virginia 15.2-2204 and Section 5-009 of the Fauquier County Code, based upon the Board's findings:

1. The property was acquired in good faith; and
2. Strict application of the Ordinance would effectively prohibit or unreasonably restrict use of the property.
3. The granting of the variance will alleviate a clearly demonstrable hardship approaching confiscating, and is distinguished from a special privilege or convenience sought by the applicant.
4. The hardship or restrictions on the use of the property are by reason of:  
Exceptional topographic conditions or other extraordinary situation or condition of property immediately adjacent thereto;
5. The size or shape, exceptional conditions, or extraordinary situation which result in the hardship or restrictions on the use of the applicant's property are: exceptional topographic conditions or other extraordinary situation or condition of property immediately adjacent thereto;
6. The variance will be in harmony with the intended spirit and purpose of the Ordinance, and would result in substantial justice being done.
7. The strict application of the Ordinance will produce undue hardship.

8. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity and is not of so general or recurring a nature as to make reasonably practical the formation of a general regulation to be adopted as an amendment to the Ordinance.
9. The authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.
10. The minimum variance that is necessary to afford relief is 21.6 feet.

#### **SPECIAL PERMIT #48098 RUTH EMBREY**

Applicant is requesting special permit approval to conduct up to six yard sales per year at her residence. The subject property is identified as PIN #7807-61-8750-000, containing 1.290 acres, located at 12505 Harpers Run Road (State Route 836) and Marsh Road (State Route 17) and is zoned Rural Agricultural, Cedar Run District.

Mr. Hodge reviewed the staff report and stated that the Zoning Ordinance allows two yard sales per calendar year and requires a special permit for a third or more. The maximum number of yard sales allowed in a calendar year is six. A site visit was made this morning.

Mrs. Embrey and her son, Larry Embrey, were present in support of her request. Mrs. Embrey stated that she lived alone and conducted the yard sales for extra money. Her son stated his mother had conducted yard sales for the last fifteen years, with 90% of the profits being returned to the community. The majority of the proceeds are used to help a non-denominational church and a Boy Scout group that meets at the VFW. Mr. Embrey went on to state that his mother was very active in the community and donated clothing and food to numerous organizations.

Mr. Barr noted that parking appeared to be a concern. Mr. Embrey stated that no parking signs could be placed along the road. He further noted that there had not been an accident in the last fifteen years during one of her yard sales.

Mr. Lofdahl stated a yard sale occurs when personal items are offered for sales. He noted that it appeared Mrs. Embrey was operating more like a commercial operation or flea market. Mrs. Embrey stated that the items she offers are items people are going to throw away. Instead, they give the items to her; therefore they are hers to do with as she pleases.

Mr. Meadows asked, on average, how many yard sales were conducted on the property last year? Mr. Embrey stated that approximately 10 to 12 yard sales per year are held on the property. Mr. Meadows asked Mr. Embrey if he felt parking in the deceleration lane created a traffic hazard. Mr. Embrey stated that there was room for more than 70 vehicles to park on the adjoining VFW property. Mr. Meadows asked for clarification from Mr. Hodge regarding off-site parking. Mr. Hodge stated that the standards did not allow for off-site parking. Mr. Meadows explained to Mr. Embrey that the VFW was not available to use for parking. Furthermore, neither the deceleration lane nor the side road were available for parking. Parking is only allowed on Mrs. Embrey's property.

Mr. Embrey stated if no parking signs were posted along the deceleration lane, it would help

with the parking situation. He stated that Mrs. Embrey has adequate parking in her driveway for 15 to 20 cars, plus 2 acres in the yard that is cleared. Mr. Meadows called attention to the outlined parking area in the application submittal material. Mr. Barr asked if Mrs. Embrey felt confident that she could house the required parking on her property. Mr. Embrey offered that his mother could have the Boy Scouts directing traffic into the yard, keeping them off the street and away from the VFW.

Ms. Jacqueline Sarlak spoke in favor of the request. She stated that she had been to many of Mrs. Embrey's yard sales and had never seen more than a few cars. She stated that Mrs. Embrey had helped her and her child with her kindness as well as with her yard sales.

Mr. Thomas Mann spoke in favor of the request. Mr. Mann is a retired Army Lieutenant Colonel, trained in traffic control. Mr. Mann stated that he had never seen any traffic problems at the site. He stated that Mrs. Embrey has adequate parking on her lot for the approximately five to eight cars she has at any one time. Mr. Lofdahl asked if Mr. Mann had ever seen cars parked along Route 17. Mr. Mann stated that he had seen a few; however, he had never seen them create a problem. He asked the Board to support the request.

On the motion made by Mr. Van Luven and seconded by Mr. Meadows, it was moved to grant special permit #48098, after due notice and hearing, as required by Code of Virginia 15.2-2204 and Section 5-009 of the Fauquier County Code, based upon the Board's findings:

1. The proposed use will not adversely affect the use or development of neighboring properties.
2. It is in accordance with the applicable zoning district regulations and to applicable provisions of the adopted Comprehensive Plan, and does conform to the general standards set forth in Section 5-006(1) through (9) of the Zoning Ordinance of Fauquier County, which sections are incorporated in this Motion as if fully set forth.
3. The use will be compatible with the neighborhood in which it is to be located.
4. The application does comply with the specific standards which apply to the use in question, namely:

## **6-102**

### **Permitted Accessory Uses**

25. Yard/garage sales access to residential uses, subject to the following limitations (no Zoning Permit required):
  - B. A yard sale shall not continue for longer than two days, which shall be consecutive.
  - C. Items offered for sale shall be used household goods or articles created or substantially processed on the premises by the residents thereof, and shall be the property of those residents.

- D. Yard sales in excess of two (2) per year may be granted with special permit approval. In no case shall more than 6 yard sales be permitted in any calendar year.
- 5. The special permit is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance: (Conditions including, but not limited to, those recited in Section 5-007 A-L of the Zoning Ordinance):
  - 1. All parking must be in areas delineated in the application.
  - 2. No parking along US Route 17.
  - 3. While conducting a yard sale, no parking signs are to be posted along US Route 17.
  - 4. The special permit is granted for a period of 18 months.

The motion carried unanimously.

#### **SPECIAL PERMIT #48115, RIKA, LLC**

Applicants are requesting special permit approval to continue operating a Residential Care Facility (community youth home). The subject property is identified as PIN #7828-40-2249-000, containing 18.34 acres, located at 3493 Midland Road (State Route 610), and is zoned Rural Agricultural, Cedar Run District.

Mr. Hodge reviewed the staff report and reminded the Board a site visit was made that morning. Mr. Hodge stated the Board originally approved the special permit on March 4, 1999 for a one-year period, with a maximum of ten children. Following a May 4, 2000 public hearing, the Board of Zoning Appeals approved the more recent special permit on June 1, 2000 for a period of 15 months, limiting the number of children to 14.

Mrs. Cathy Fitzsimmons was present in support of her request. She stated that the facility has been in continued operation for a little over two years. During that time, they have experienced several growing pains as expected. Mrs. Fitzsimmons stated the facility has been carefully monitored with respect to their State License, Social Services and Mental Health Agency License. Recently, the facility has expanded to include an educational component. Mrs. Fitzsimmons explained that overall they have experienced wonderful success and provided a much-needed service.

Mr. Barr asked if Mrs. Fitzsimmons recalled the conditions placed on the permit approval. Mrs. Fitzsimmons stated she was aware of the conditions. She explained that they had replaced two of the trees that had died, replaced the one-way traffic sign, and had one faulty batch of calcium chloride that had to be reapplied several times. Mr. Meadows asked when the last time the calcium chloride was applied. Mrs. Fitzsimmons explained that the last application was approximately one month ago. She stated the applications of calcium chloride are concentrated by the neighbor's garden area. Mr. Lofdahl stated he noticed the front of the driveway appeared to have an application of calcium chloride; however, the back of the driveway appeared to contain new gravel. Mrs. Fitzsimmons explained that the gravel shifts, and she periodically has a loader even out the driveway.

Mr. Lofdahl described a light he saw on the chimney during the site visit. Mr. Fitzsimmons stated they have a garage light and spotlights. These lights must be turned on with a switch to be activated, and are rarely used. Mrs. Fitzsimmons stated that they had not installed any new lights on the property. Furthermore, she offered to remove any light that was offensive. However, at this time she was not aware of the light that was being referenced.

Mr. Lofdahl asked if the request today was merely for a continuance or if they wanted to alter the maximum number of children. Mrs. Fitzsimmons stated that 14 was the maximum, she did not have any need to expand. Mr. Meadows explained that even if the Board granted the special permit with a limitation of 14 children, Health Department approval was required for more than 12. The Health Department commented that any occupancy beyond 12 residents would require upgrades to "...equipment, plumbing and ventilation..."

Mr. William Hitchings, adjacent property owner, spoke in opposition of the request. He stated he is opposed to the facility and renewal of the permit. He stated the dust is a growing problem for which the calcium chloride applications are not helping. He explained that the aforementioned light points directly in his bedroom and Mr. Fitzsimmons and one of the house parents continually ignore the one way sign. Mr. Hitchings is concerned that when the application was approved the kids were restricted to 6.7 acres, whereas the current application refers to 18 acres. In addition, Mr. Hitchings feels there is a discrepancy with regard to the number of children at the facility. He stated the Virginia Department of Health inspected the site in December and January and found numerous violations. Mr. Hitchings expressed concern that there are three of these facilities in the County and they are all located in Cedar Run District. He requested the Board give serious consideration to denial of the request; however, if granted he requested more restrictions on the use, offering better protection of his property.

Mrs. Fitzsimmons responded to Mr. Hitchings complaints, beginning with the fact that the Virginia Department of Health had never cited her with a violation. The fact is the Virginia Department of Social Services cited a violation at the facility. She went on to offer receipts for the applications of calcium chloride applied over the years. She stated that the youth home only occupies six acres, and she and her husband privately own the rest of the property. She stated that she had once been given misinformation and as a result, an inappropriate client was placed in her care. Once she realized the problem, she had the child removed; thus, the facility has never posed a threat to the community.

Mr. Meadows asked if Mrs. Fitzsimmons had ever lost her license in the last year. Mrs. Fitzsimmons stated that there was a period of time where the renewal was in question; however, she appealed and has never lost her license. She presented two consecutive years worth of licenses to the Board. Mr. Barr requested the statement regarding her license be made a part of the record.

Mr. Meadows called attention to the grassy area along the gravel road between the road and the Hitchings' fence. He stated that a row of evergreens planted in this area might alleviate the Hitchings' problem with the light.

On the motion made by Mr. Meadows and seconded by Mr. Tufts, it was moved to grant special permit #48115, after due notice and hearing, as required by Code of Virginia 15.2-2204 and Section 5-009 of the Fauquier County Code, based upon the Board's findings:

1. The proposed use will not adversely affect the use or development of neighboring properties.
2. It is in accordance with the applicable zoning district regulations and to applicable provisions of the adopted Comprehensive Plan, and does conform to the general standards set forth in Section 5-006(1) through (9) of the Zoning Ordinance of Fauquier County, which sections are incorporated in this Motion as if fully set forth.
3. The use will be compatible with the neighborhood in which it is to be located.
4. The application does comply with the specific standards which apply to the use in question, namely:

#### **5-604**

#### **Additional Standards for Residential Care Facilities**

1. In the consideration of an application for such a use, the concentration of such facilities shall be taken into account to prevent clustering in certain neighborhoods, thereby creating an institutional setting and changing the area's character and social structure.
2. In granting a permit for a residential care facility, a maximum number of residents shall be established. This limitation shall be based upon, but not limited to, the following considerations (as well as the standards set forth in Section 006 above).
  - A. The size of the structure and of the site.
  - B. Location and size of other similar facilities in the neighborhood.
  - C. The density allowed and existing in the area.
3. In addition to the minimum lot size requirements of the zoning district in which located, the minimum lot area for a residential care facility shall be of such size that:
  - A. 300 square feet of usable outdoor recreation area shall be provided for each resident 17 years of age and younger.
  - B. 150 square feet of usable outdoor recreation area shall be provided for each resident 18 years of age and older.  
Such usable outdoor recreation area shall be delineated on a plat submitted at the time the application is filed. For the purpose of

this provision, usable outdoor recreation area shall be limited in the same manner as Paragraph 503.1.

5. The special permit is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance: (Conditions including, but not limited to, those recited in Section 5-007 A-L of the Zoning Ordinance):
  1. Continue maintenance of the road with calcium chloride applications to keep the dust down.
  2. Plant ten evergreens, six feet tall and eight feet apart, in the grass to the left of the driveway and the Hitchings' fence.
  3. Comply with all Health Department regulations without exceeding fourteen residents at any one time.
  4. Identify the one light that is problematic and have it removed.
  5. Special permit is granted for a period of three years.
  6. The special permit does not convey with the sale of the property.

The motion carried unanimously.

#### **SPECIAL PERMIT & VARIANCE #48123, BETHEL UNITED METHODIST CHURCH**

Applicants are requesting special permit approval to construct an addition to an existing social hall. A variance is also being requested for the proposed addition that would be located ten (10) feet from a side yard, wherein the Zoning Ordinance requires twenty-five (25) feet from a side yard. The subject property is identified as PIN #6986-03-3585-000, containing 2.499 acres, located on Blantyre Road (State Route 628) and Pavilion Street (private), and is zoned Residential-1, Center District.

Mr. Hodge reviewed the staff report and reminded the Board they had made a site visit this morning. He stated the exact size and design of the addition would not be decided until obtaining a decision from the Board.

Mr. Irving Thorpe, Trustee, spoke in favor of the requests. He stated the social hall was constructed in 1931, one foot off the property line. In the last 70 years the church's membership has tripled, causing the need for more space.

Mr. Barr asked if any of the structures on the property were to be removed. Mr. Thorpe replied that none of the structures would be removed. Mr. Van Luven asked if the steps or stairs would remain. Mr. Thorpe explained that there was an inside partition that would have to be removed.

Mr. Meadows stated that it is quite unusual for the Board to grant a variance or special permit of this type without a floor plan. He asked if Mr. Tharpe could provide any type of dimension. Mr. Tharpe explained that the addition would have to gain approval by the church before a floor plan could be developed. Mr. Meadows asked council, Tracy Gallehr, if the Board could approve either of the requests without a footprint of the proposal. Mrs. Gallehr stated that the Board



could postpone their decision until such time one could be provided.

Mr. Lofdahl asked if the special permit and variance could be granted, with the condition that the addition would not exceed 10 feet from the property line. Mrs. Bowen explained the Board could approve the requests as such; however, if the developed plan were different from the Board's approval then the applicant would have to return to the Board for additional approval. Mr. Tharpe stated he understood the process. It was the church's objective to gain approval for the addition, since it was so close to the property line, before incurring the expense of an architect.

On the motion made by Mr. Lofdahl; and seconded by Mr. Meadows, it was moved to grant special permit #48123, after due notice and hearing, as required by Code of Virginia 15.2-2204 and Section 5-009 of the Fauquier County Code, based upon the Board's findings:

1. The proposed use will not adversely affect the use or development of neighboring properties.
2. It is in accordance with the applicable zoning district regulations and to applicable provisions of the adopted Comprehensive Plan, and does conform to the general standards set forth in Section 5-006(1) through (9) of the Zoning Ordinance of Fauquier County, which sections are incorporated in this Motion as if fully set forth.
3. The use will be compatible with the neighborhood in which it is to be located.
4. The application does comply with the specific standards which apply to the use in question, namely:

#### **5-602**

#### **Additional Standards for Places of Worship**

Uses proposed in conjunction with places of worship shall be subject to regulations applicable to such use (e.g., schools, athletic facilities).

5. The special permit is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance: (Conditions including, but not limited to, those recited in Section 5-007 A-L of the Zoning Ordinance):

There were no additional conditions placed on the special permit approval.

On the motion made by Mr. Lofdahl and seconded by Mr. Van Luven, it was moved to grant variance #48123, after due notice and hearing, as required by Code of Virginia 15.2-2204 and Section 5-009 of the Fauquier County Code, based upon the Board's findings:

1. The property was acquired in good faith; and
2. Strict application of the Ordinance would effectively prohibit or unreasonably restrict use of the property because the existing structure was building prior to implementation of the Zoning Ordinance.

3. The granting of the variance will alleviate a clearly demonstrable hardship approaching confiscating, and is distinguished from a special privilege or convenience sought by the applicant.
4. The hardship or restrictions on the use of the property are by reason of: Exceptional shallowness and shape of the property at the time of the effective date of the Ordinance between the present well and the back property line.
5. The variance will be in harmony with the intended spirit and purpose of the Ordinance, and would result in substantial justice being done.
6. The strict application of the Ordinance will produce undue hardship.
7. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity and is not of so general or recurring a nature as to make reasonably practical the formation of a general regulation to be adopted as an amendment to the Ordinance.
8. The authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.
9. The minimum variance that is necessary to afford relief is 15 feet.
10. The following conditions were place on the variance approval:
  - a.) The building site with this variance must not be closer than 10 feet to the rear property line.
  - b.) Site plan as required.

**SPECIAL PERMIT #48156, DANNY ROSE AND SAMANTHA GILLION**

Applicant is requesting special permit approval to locate a cottage industry (cabinet making) in a proposed 420 square foot building on his property. The subject property is identified as PIN #6054-65-1902-000, containing .533 acre, located at 9330 Brooks Cluster Circle (private) off of Patrick Street (State Route 619), and is zoned Rural Agricultural and Residential-1, Scott District.

Mr. Hodge reviewed the staff report and stated a site visit was made that morning. He called attention to the fact that there are two zoning districts on the property: Residential-1 (R-1) and Rural Agricultural (RA). Cottage industries are only allowed in the RA zoning district, thus the entire use must be located in that zoning district. Mr. Rose's proposed hours of operation are from 7:00 a.m. – 3:00 p.m., Monday through Friday.

Mr. Barr asked Mr. Rose if the proposed use would be located completely in the RA zoning district. Mr. Rose stated that his business would be located strictly in the RA zoning district. Mr. Meadows noted that the majority of the subdivision is zoned R-1 and it is the Board's duty to research what impact this use would have on the neighbors. Mr. Rose stated that providing the neighbors had "normal" (9:00 a.m. to 5:00 p.m.) jobs, there should not be an impact. Mr. Rose stated he would keep the door to the garage closed in order to keep the area climate controlled, which is a necessity in his business.

Mr. Meadows asked what impact the noise would have on the neighbors. Mr. Rose stated that the noise would not be any louder than a vehicle. Mr. Lofdahl asked about the size of the

equipment. Mr. Rose replied the largest tool he uses has a one horsepower engine.

Mr. Barr asked Mr. Rose to describe the type of activities his business entailed. Mr. Rose stated that in older buildings he replaces a lot of trim that is no longer manufactured. In addition, he replaces cabinets, designs and constructs custom cabinets, custom entertainment centers, and countertops. Mr. Lofdahl asked what percentage of the work is actually done on this property. Mr. Rose stated that on average 12 ½% of his time is spent in the shop. He explained this business is his livelihood, providing the only source of income for his family of four.

Mr. Meadows asked how many individuals he employed. Mr. Rose stated he has two employees, one living directly across the street. Mr. Meadows asked if the 420 square foot building would be too crowded for three individuals plus equipment. Mr. Rose agreed that at times it might be crowded.

Mr. Barr asked if he would have to encroach on the neighborhood's common area. Mr. Rose stated that when the building was delivered he would have to use the common area; however, he would not encroach on this area on a daily basis. Mr. Barr raised the issue of parking. Mr. Rose stated that one employee can walk to work, eliminating any parking needs. Mr. Meadows asked if either him or his employees used the cul-de-sac to turn around. Mr. Rose stated that at times he has had to use the cul-de-sac.

Mr. Rose presented three letters in support of his request.

Ms. Melissa Young spoke in opposition of the request. Ms. Young shared that her comments represent the feelings of 50% of the homeowners. Ms. Young stated as a neighborhood, they were not aware of Mr. Rose's intent before receiving public hearing notice from the County. She stated she felt the neighbors were intentionally avoided and requested to see any available material on Mr. Rose's proposal.

Ms. Young stated that as homeowners they are bound to covenants, and have concerns with regard to the impact of a commercial business. Mr. Barr explained that the Board does not deal with covenants; that is a civil matter.

Ms. Young stated the road is a private road that is financially funded. She stated the homeowners have parking assignments, which could be impacted by Mr. Rose's employees. She complained that Mr. Rose parks his trailer in his front yard and uses the cul-de-sac for turning around and delivery of his materials. Ms. Young went on to say that she is opposed to Mr. Rose's use of the common ground, which was intended to be open. She raised the question as to how his finished products could be carried out and hand loaded during inclement weather. She further felt it was presumptuous of Mr. Rose to believe all the neighbors work 9:00 a.m. to 5:00 p.m. jobs.

Ms. Young stated as the first impression, Mr. Rose's property is not keeping with the description of a residential community. She stated his operation would be disruptive to the peace and integrity of the neighborhood and furthermore it compromises future development.

Mr. Barr asked if Ms. Young had any environmental concerns. Ms. Young stated she is concerned about the noise, lights, run-off from the cul-de-sac use, dust and the use of the road for commercial purposes.

Nancy Anderson spoke in opposition of the request. She stated her mother is 86 years old, her niece works odd hours and sleeps late, and she works from 10:30 a.m. – 7:30 p.m.; therefore, there are three individuals in her residence who are present during his hours of operation. Mr. Lofdahl asked Ms. Anderson to identify her chief complaint. Ms. Anderson stated traffic, noise, and general disruption of the area are her main concerns.

Matthew and Christine Jacobs spoke in opposition of the request. Mr. Jacobs stated that due to the layout of the neighborhood, he was “joined at the hip” with Mr. Rose. Mr. Jacobs stated that there is twelve feet between his back door and Mr. Rose’s property line. Mr. Jacobs is concerned about the traffic, parking, maintenance of the road, and the visual impact Mr. Rose’s business will have on the neighborhood. Mrs. Jacobs stated that Mr. Rose’s proposal is simply not suitable for their intertwined, residential area.

Mr. Meadows stated that he would like to table the application for 30 days, giving Mr. Rose time to talk to his neighbors and try to solve several issues. However, there is the option to close the public hearing and act on the request based on today’s testimony. Mr. Meadows asked Mr. Rose if he felt it was in his best interest to work out things with his neighbors before allowing the Board to vote on his request. Mr. Rose stated that he cannot change the way his neighbors feel, and the final decision rests with the Board.

Mr. Barr stated he would entertain the Board’s suggestion with a motion. On the motion made by Mr. Meadows and seconded by Mr. Lofdahl it was moved to close the public hearing and table the application until the next regularly scheduled meeting, November 1, 2001. The motion carried with a three to one vote. Ayes: Meadows, Lofdahl, Tufts / Nays: Van Luven

Mr. Rose asked if he could withdrawal his application if the problems with his neighbors could not be solved. Mrs. Bowen stated that he could withdrawal his application at any time; however, this is strictly a land use matter not a popularity contest. Ms. Gallehr, council, explained that the Board could use the neighbors’ opinions in making their land use decision.

#### **VARIANCE #48161, EDWARD L. AND TARA E. YATES**

Applicants are requesting a variance to construct a single family dwelling 12.5 feet from the side property lines, wherein the Zoning Ordinance requires 15 feet to the side yard requirements. A variance was granted on July 5, 2001 to allow the dwelling to be located 13.5 feet from the side property lines; however, due to an updated survey an additional one foot variance is being requested from both side property lines. The subject property is identified as PIN #6993-49-7668-000, containing 1.525 acres, located on Frye’s Lane (State Route 771), and is zoned Village, Center District.

Mr. Hodge reviewed the staff report. He stated the previous application was based on an existing survey. However, when Mr. and Mrs. Yates had a new survey completed it showed the lot was two feet more narrow than previously shown. Mr. Hodge reminded the Board that the lot

is a non-conforming lot.

Mr. and Mrs. Yates were present in support of their request. Mr. Yates stated that instead of the original 1.5' from both property lines, they now were requesting 2.5' from both property lines.

On the motion made by Mr. Van Luven and seconded by Mr. Meadows, it was moved to grant variance #48161, after due notice and hearing, as required by Code of Virginia 15.2-2204 and Section 5-009 of the Fauquier County Code, based upon the Board's findings:

1. The property was acquired in good faith; and
2. Strict application of the Ordinance would effectively prohibit or unreasonably restrict use of the property because of the narrowness of the lot.
3. The granting of the variance will alleviate a clearly demonstrable hardship approaching confiscating, and is distinguished from a special privilege or convenience sought by the applicant.
4. The hardship or restrictions on the use of the property are by reason of: Exceptional narrowness, shallowness, size or shape of the property at the time of the effective date of the Ordinance.
5. The variance will be in harmony with the intended spirit and purpose of the Ordinance, and would result in substantial justice being done.
6. The strict application of the Ordinance will produce undue hardship.
7. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity and is not of so general or recurring a nature as to make reasonably practical the formation of a general regulation to be adopted as an amendment to the Ordinance.
8. The authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.
9. The minimum variance that is necessary to afford relief is 2.5 feet from each property line.

The motion carried unanimously.

**ADJOURNMENT** There being no further business before the Board, the meeting adjourned at approximately 4:05 P.M.

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William Rider, Chairman

Copies of all files and materials presented to the Board are attached to and become a part of

these minutes. A tape recording of the meeting is on file for one year.

C:\bza files\2001 minutes\11-2-01.doc